



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES  
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE  
CIVIL RIGHTS BUREAU

September 17, 2021

**VIA ECF**

The Honorable Gabriel W. Gorenstein  
United States District Court  
Southern District of New York  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street  
New York, New York 10007

**Re: *In re: New York City Policing During Summer 2020 Demonstrations,*  
*No. 20-CV-8924*  
*This Filing is Related to 21-cv-322, People v. City of New York et al.***

Dear Judge Gorenstein:

We write on behalf of the People of the State of New York to respectfully request a discovery conference or, in lieu thereof, an order compelling Defendants to produce certain disciplinary and promotion records for Captain Vitaliy Zelikov by a date certain. Defendants have failed to comply with the parties' agreement to produce those records and the parties have reached an impasse as to timing.

The People first raised this issue with the Court by letter dated August 13, 2021, challenging Defendants' improper instruction during his deposition that Captain Zelikov not answer questions about serious discipline he had received from the New York Police Department. ECF No. 230. At an August 19, 2021 conference, the Court directed the parties to meet and confer and, if possible, arrive at an agreement as to what records Defendants could produce to establish "what the police department knew when they meted out this discipline. Or more precisely, what they knew when they then went on to promote this individual." 8/19/21 Tr. at 41:17-20. If the parties failed to agree on the production of records, the Court directed the parties to write to the Court. The Court deferred ruling on whether to recall Captain Zelikov to testify about his discipline and subsequent promotion.

The next day, August 20, 2021, the parties conferred<sup>1</sup> and agreed that Defendants would: (i) expedite a search for what records they had; and (ii) identify what documents existed

---

<sup>1</sup> The following representatives were present at the August 20 meet and confer: Travis England for the People; Remy Green, Jonathan Moore, and Gideon Oliver for the *Sow* plaintiffs; JP Perry and Jennvine Wong for the *Payne*

Hon. Gabriel W. Gorenstein  
September 17, 2021  
Page 2

and when they could be produced to Plaintiff the following week on or before August 27. Defendants' counsel did not provide that information until September 1, when Elissa Jacobs confirmed by email that Defendants had requested, but did not know when she would receive, the Internal Affairs Bureau and Department Advocate's investigative files and Captain Zelikov's performance monitoring file. Ms. Jacobs also stated that counsel was still searching for records pertaining to Captain Zelikov's promotion and application to the Career Advancement Review Board but provided no information about an expected date of production.

Defendants did not provide any further information regarding what or when records would be produced. The undersigned emailed counsel on September 8, 2021, requesting the disciplinary files that counsel had identified and an update on the promotion-related records. Ms. Jacobs responded later that day by email, stating simply that the files had been requested. However, counsel Dara Weiss agreed to meet and confer with the undersigned on September 9, which took place at 11:00 a.m. for approximately ten minutes. Ms. Weiss agreed to confirm by the end of the day a time by which the requested files would be produced and whether and what promotion-related files existed. However, she did not do so by close of business. Nor did Defendants respond to the undersigned's September 13 email requesting an update and September 15 email declaring an impasse as to timing and the type of documents to be produced if no response was received by 4:00 p.m. that day.

Due to Defendants' nearly month's-long delay in providing these records or even a date by which to provide them, and to permit Plaintiff sufficient time to assess whether additional records or testimony are needed, Plaintiff respectfully requests that the Court order Defendants to produce the IAB and Department Advocate investigative files, Captain Zelikov's performance monitoring file, and any promotion-related records to Plaintiff by September 24, 2021.

Respectfully submitted,

/s/ Lillian Marquez

Lillian Marquez, *Assistant Attorney General*  
Office of the New York State Attorney General  
28 Liberty Street, 20<sup>th</sup> Floor  
New York, NY 10005  
Tel.: (212) 416-8250

*Counsel for Plaintiff People of the State of  
New York*

cc: All Counsel of Record (by ECF)

---

plaintiffs; and Elissa Jacobs and Dara Weiss for Defendants. The meeting began at 10:30 a.m. and lasted approximately one hour.